<u>REMARKS</u>

Claims 1-9 and 11-15 are currently pending in the subject application and are presently under consideration. Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I.   Objection to Drawings

The drawings are objected to because the figures do not show amended limitations, "a plurality of member machines configured to <u>form an array</u> of machines, wherein the <u>operational metrics indicate</u> one or more of the member machines and the unified <u>result set is indicative</u> of the <u>system-wide state of the array</u> of machines, <u>an interface</u> for <u>providing the unified</u> result set to a requestor as if the array of <u>machines were a singular machine</u>." Withdrawal of this objection is respectfully requested for at least the following reasons. The written description provides sufficient support for the amended limitations. *(See e.g.,* p. 1, lines 26-28; p. 2, lines 1-9, 13-18; p. 5, lines 15-29; p. 6, lines 1-3; 8-10, 13-15, 22-24; p. 7, lines 14-16; p. 15, lines 8-12; p. 16, lines 11-16, 23-26; p. 17, lines 14-17, 24-26; and p. 18, lines 4-7). Although the drawings can be used to provide written description support for a claim limitation, there is no requirement that all of the claim limitations be found in the drawings if the written description is otherwise adequate to understand the claimed subject matter. A drawing is required only if necessary to understand the claimed subject matter. *(See* 37 C.F.R. §1.81(a)). However, although applicants' representative respectfully disagrees that a new drawing is necessary, in order to expedite prosecution, new Figure 9 is submitted herewith.

II.   Rejection of Claims 1-9 and 11-16

Claims 1-9 and 11-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of Murstein U.S. Patent No. 6,789,046 ("Murstein"). A terminal disclaimer is filed herewith and accordingly, withdrawal of this rejection is respectfully requested.

III.   Rejection of Claims 1-9 and 11-16

Claims 1-9 and 11-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-66 of Teegan U.S. Patent No.

6,748,555 ("Teegan"). For the reasons stated below and in previous replies, Teegan does not anticipate nor render obvious the claimed subject matter. However, in order to expedite prosecution, a terminal disclaimer is filed herewith and accordingly, withdrawal of this rejection is respectfully requested.

IV.   Objection of Claim 1

Claim 1 is objected to because of the following informalities: claim 1 mentions, "the member machines", which should be "the plurality of member machines". Claim 1 has been amended and accordingly, withdrawal of this rejection is respectfully requested.

V.   Rejection of Claims 1, 2, 6, 12, 13, 15 and 16 Under 35 U.S.C §112

Claims 1, 2, 6, 12, 13, 15 and 16 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims have been amended and accordingly, withdrawal of this rejection is respectfully requested.

VI.   Rejection of Claims 1-9 and 11-16 Under 35 U.S.C. §102(e)

Claims 1-9 and 11-16 stand rejected under 35 U.S.C. §102(e) as being anticipated by Salzberg *et al*. US Publication. No. 2003/0086536, KPMG Consulting Inc. (Hereinafter Salzberg-KPMG). This rejection should be withdrawn for at least the following reason. The applicants have provided sufficient evidence to establish that the claimed subject matter was reduced to practice prior to the effective date of Salzberg-KPMG.

The Examiner contends that "[t]he evidence submitted is insufficient to establish diligence from a date prior to the date of reduction to practice of the Salzberg-KPMG reference to either a constructive reduction to practice or an actual reduction to practice." (Office Action at p. 4). The Examiner cites to MPEP δ 715.07(a) which states "[w]here conception occurs prior to the date of the reference, but *reduction to practice is afterward*, it is not enough merely to allege that applicant or patent owner had been diligent." (MPEP δ 715.07(a), 8th Ed., rev. Aug. 2005) (emphasis added). Applicants' representative respectfully notes that this section of the MPEP is inapplicable as the reduction to practice of the claimed subject matter *preceded* the effective date of the Salzberg-KPMG reference

The Examiner also contends that:

> [t]he evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the Salzberg-KPMG reference. . . . Analysis of Exhibits A-C, dated February 26, 2000 and/or June 3, 2000 fail to show the conception of the invention as claimed, i.e., independent claim limitations, a system for gathering and aggregating <u>operational metrics</u> comprising: a plurality of member machines configured <u>to form</u> an <u>array of</u> machines, the member machines having a gathering and aggregation system to gather <u>operational metric data from the plurality of member machines</u> and aggregate the operational metric data <u>into a unified result set</u>, wherein the operational metrics indicate <u>a state of the member machines</u> and the unified result set is indicative of the <u>system-wide state</u> of the <u>array</u> of machines, <u>an interface for providing the unified result set</u> to a <u>requestor</u> as if the array of <u>machines were a singular machine</u>, and the limitations of the dependent claims.

(Office Action dated Sept. 26, 2000 at p. 4). Applicants' representative respectfully disagrees. The Exhibits clearly show screen shots of the user interfaces (UI) of functional beta versions of the Microsoft product Application Center 2000. These screen shots show the UI displaying a unified result set of the operational metrics across an array (*i.e.*, a cluster) of servers as if the array were a singular machine. (*See e.g.*, Declaration Under 37 C.F.R. §1.131 Exhibits A, B and C slides entitled "Main MMC console," "Performance Monitor UI," "Performance Viewer," "Health Monitor Console," "Performance Counters," "Server Health Rollup," and "Log Access Possibilities," showing various interfaces for displaying the state of the cluster as a whole, "Monitoring" showing features of integrated monitoring tools that "roll up perf, event, log data from across multiple servers into integrated console," "Viewing the Logs" showing features of a Cluster Event Viewer that provides system-wide event metrics for the array or per server gathered and aggregated by a log agent, "Cluster Event Roll Up" showing features of LogQueryHelper that aggregates events across the cluster, "Performance Viewer Cluster Rollup" showing features of various aggregation methods and "Server Health Rollup" showing a top-level view of server health system status from HealthMon.

The Examiner further contends that "the declaration does not contain attachments of <u>both</u>, the contents of exhibits A-C implemented <u>on February 26, 2000</u>, and the contents of exhibits A-C implemented <u>on June 3, 2000</u> as stated in the declaration." (Office Action at p. 4).

Applicants' representative respectfully submits that the inventors' Declaration attesting that beta versions of the Microsoft product Application Center 2000 having the claimed functionality along with the screen shots and other supporting documents are sufficient evidence to show reduction to practice prior to the effective date of the Salzberg-KPMG reference. The Declaration states that "subject matter claimed in the above-identified patent application was reduced to practice in the United States by a date prior to June 26, 2000" and that "[e]xhibits A – C contain copies of *screen shots taken from computers running one or more beta versions* of the Microsoft product Application Center 2000 as well as documents outlining some of the features of *this software*." (Declaration Under 37 C.F.R. §1.131 at pp. 1-2) (emphasis added). The screen shots and the documents presented are evidence that beta versions of Application Center 2000 having these features were implemented on Microsoft computers at least as early a February 26, 2000 and again on June 3, 2000. (*See e.g.*, Declaration Under 37 C.F.R. §1.131 Exhibits A, B and C slides entitled "Log Viewer UI," "Event Viewer," "Events: List View," "Events: Details," "Using Health Monitor," "Health Monitor Console," "Performance Counters," "Cluster-Wide View," "Unified Event Log" and "Log Access Possibilities").

The Examiner also contends that "[i]t is not apparent whether the contents of supplied exhibit A, exhibit B and exhibit C were all implemented on February 26, 2000 or on June 3, 2000." (Office Action at p. 4). Applicants' representative respectfully notes that the inventors have attested to the fact that the claimed subject matter was reduced to practice prior to the effective date of the Salzberg-KPMG reference. The screen shots and other documents attached in the exhibits are evidence that sufficiently corroborates the inventors' Declaration.

Although applicants' representative respectfully disagrees that the previously submitted evidence is inadequate to show a reduction to practice of the claimed subject matter, in order expedite prosecution, a Supplemental Declaration is filed herewith providing additional evidence that beta versions of Application Center 2000 were functional and executed on Microsoft computers prior to June 26, 2000. Exhibit A is a copy of a document describing some of the features of Microsoft's Application Center 2000. The document was created on or before Dec. 8, 1999 as noted in the History section. Exhibit B is a copy of Fig. 6A of U.S. Patent No. 6,789,046 ("Murstein"). Fig. 6A is a screen shot taken while a beta version of Microsoft's Application Center 2000 was executing on a Microsoft computer on April 18, 2000. Fig. 6A shows the display of operational metrics pertaining to MyCluster. Exhibits C-E are copies of

several publicly available documents from independent sources that document the public release of the beta-2 version of Application Center 2000. These media articles were obtained from http://redmondmag.com/reports/archive/default.asp?date=December%202000 , http://www.infoworld.com/articles/mt/xml/00/09/04/000904mtappctr.html and http://windows.about.com/od/pastnews/l/blhistory2000.htm accessed on November 26, 2000.

Although the Examiner contends that the evidence presented does not show the claimed subject matter, the Examiner does not even attempt to explain why such a conclusion was reached. All the Examiner has done is present a *bare conclusion without providing a basis* for that conclusion. Applicants' representative respectfully requests that the Examiner explain the reasoning underlying the Examiner's conclusions. For instance, if the Examiner is of the opinion that the evidence submitted does not show the claimed subject matter, applicants' representative requests that the Examiner explain how the evidence submitted differs from the claimed subject matter.

VII.   Rejection of Claims 1-9 and 11-16 Under 35 U.S.C. §102(e)

Claims 1-9 and 11-16 stand rejected under 35 U.S.C. §102(e) as being anticipated by Teegan *et al.* U.S. Patent No. 6,748,555 (Hereinafter Teegan). Withdrawal of this rejection is respectfully requested for at least the following reasons. Teegan does not disclose **each and every** limitation of the subject claims. In particular, Teegan does not disclose gathering and aggregating operational metrics indicative of one or more **states of a plurality of member machines** configured as an array of machines, a unified result set indicative of the **state of the array of machines as if the array of machines were a singular machine** or an interface for providing the unified set result to a requestor **as if the array of machines were a singular machine**

The Examiner contends that Teegan discloses the limitations at paragraphs 2, 4, 16, 20 38, 64, 65 and 75. (*See* Office Action at pp. 2 and 14). However, Teegan is formatted in columns having line numbers, not paragraph numbers. Applicants' representative has counted the paragraphs of Teegan in an attempt to understand what portions of Teegan the Examiner is referencing, but the sections corresponding to those paragraph numbers cited by the Examiner do not correspond to the claim limitations. Applicants' representative respectfully requests that the

Examiner provide citations to Teegan in the column, line format so that applicants' representative can know what it is that the Examiner is citing to in support of the rejection.

Teegan discloses a software manager for monitoring software objects. (*See e.g.*, Teegan at Abstract). The software manager is operable to derive metrics to provide an overall picture of a software object's performance. (*See e.g., Id.*). The subject claims are directed toward systems that provide operational metrics about the state of an array of *machines*, not about the performance of software objects. Accordingly, applicants' representative respectfully requests that this rejection be withdrawn.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP125US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

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